

Caroline R. Guest, OSB No. 943280
caroline.guest@ogletree.com
Florence Z. Mao, OSB No. 144804
florence.mao@ogletree.com
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
The KOIN Center
222 SW Columbia Street, Suite 1500
Portland, OR 97201
Telephone: 503-552-2140
Fax: 503-224-4518

Attorneys for Defendant
EDWARDS VACUUM LLC

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION**

ANDREW WILLIAMS,

Plaintiff,

v.

EDWARDS VACUUM LLC,

Defendant.

**Case No.: 3:21-CV-00543
(Washington County Case No. 21CV09310)**

**DEFENDANT EDWARDS VACUUM
LLC'S NOTICE OF REMOVAL TO
FEDERAL COURT**

U.S.C. §§ 1332, 1441, AND 1446

**TO: THE CLERK OF THE ABOVE-ENTITLED COURT, PLAINTIFF ANDREW
WILLIAMS, AND HIS ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that Defendant Edwards Vacuum LLC ("Defendant"), by and through its undersigned counsel, hereby removes this action from the Circuit Court of the State of Oregon, County of Washington ("State Court Action"), to the United States District Court for the District of Oregon pursuant to 28 U.S.C. §§ 1332, 1441(b) and 1446. Defendant removes this case on the grounds of diversity jurisdiction. Defendant's Notice of Removal is based upon and supported by the following:

1. This Court has original jurisdiction over this action under the diversity of citizenship statute: 28 U.S.C. § 1332(a). In relevant part, the diversity statute grants district courts original jurisdiction over civil action in which the matter in controversy exceeds \$75,000, exclusive of interest and costs, and is between citizens of different states. As set forth below, this action meets all of the diversity statute's requirements for removal, and is timely and properly removed by the filing of this Notice.

2. On or about March 11, 2021, Plaintiff Andrew Williams ("Plaintiff") caused the Complaint to be filed against his former employer, Defendant Edwards Vacuum LLC ("Defendant"), in the Circuit Court of the State of Oregon for the County of Washington ("the State Court Action"). Plaintiff purports to bring claims against Defendant for discrimination (ORS 659A.030) and retaliation (ORS 659A.030(1)(f)). *See* concurrently-filed Declaration of Caroline R. Guest in Support of Defendant's Notice of Removal ("Guest Decl."), Exhibit 1 (Complaint) and Exhibit 2 (Oregon eCourt Case Information docket printout for Washington County Circuit Court).

3. On March 12, 2021, Defendant was served with Plaintiff's Summons and Complaint. *See* Guest Decl., ¶ 4.

4. This Notice of Removal is timely because it is filed within 30 days of service of Plaintiff's Summons and Complaint. 28 U.S.C. § 1446(b)(2)(B) ("Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal.").

5. Removal to this Court is appropriate because the Complaint is pending in the Circuit Court of the State of Oregon for the County of Washington, which is located in the Portland Division.

6. The State Court Action may be removed from the state court under 28 U.S.C. §§ 1332 and 1441 because it is a civil action, the matter in controversy exceeds \$75,000,

exclusive of interests and costs, and the State Court Action is between citizens of different states, as further explained in the paragraphs below.

7. This action is a civil action that may be removed from the state court under 28 U.S.C. §§ 1332, 1441(a) and 1446 because there is complete diversity between Plaintiff and Defendant.

(a) Upon information and belief, Plaintiff resides in and is a citizen of the State of Oregon. Complaint ¶ 4. For diversity of citizenship purposes, a person is a “citizen” of the state in which he or she is domiciled at the time the lawsuit is filed. *Armstrong v. Church of Scientology Int’l*, 243 F.3d 546, 546 (9th Cir. 2000) (citing *Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986)); *Kantor v. Wellesly Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983).

(b) For purposes of diversity jurisdiction, a limited liability company “is a citizen of every state of which its owners/members are citizens.” *See 3123 SMB LLC v. Horn*, 880 F.3d 461, 465 (9th Cir. 2018). Prior to and on the filing date of the Complaint (March 11, 2021), as well as the date of this Motion, Defendant was, and still is, a limited liability company incorporated under the laws of the State of Delaware, with its principal place of business in the State of New York. *See* Balaguer Decl., ¶ 2. Defendant is not a citizen of Oregon.

(c) The sole member of Defendant is Atlas Copco North America LLC. Atlas Copco North America LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business in the State of New Jersey. *Id.*, ¶ 3. Atlas Copco North America LLC is not a citizen of Oregon.

(d) The sole member of Atlas Copco North America LLC is Atlas Copco USA Holdings, Inc., a corporation organized under the laws of the State of Delaware. Atlas Copco USA Holdings, Inc. is headquartered, and has its principal place of business, in the State of New Jersey. *Id.*, ¶ 4. Atlas Copco USA Holdings, Inc. is not a citizen of Oregon.

(e) In sum, neither Defendant, nor any of its member organizations, are or were citizens of the State of Oregon. Plaintiff and Defendant are therefore “citizens of different

States” under 28 U.S.C. § 1332(a). See also *Hertz Corp. v. Friend*, 559 U.S. 77, 96-97 (2010).

8. This action is a civil action that may be removed from the state court under 28 U.S.C. §§ 1332, 1441(a) and 1446 because the matter in controversy exceeds \$75,000, exclusive of interests and costs. In determining the amount in controversy, the Court must consider the aggregate of general damages, special damages, punitive damages, and attorneys’ fees. *Galt G/S v. ISS Scandinavia*, 142 F. 3d 1150, 1156 (9th Cir. 1998) (claims for statutory attorneys’ fees to be included in amount in controversy, regardless of whether such an award is discretionary or mandatory); see also *Bank of Calif Nat’l Ass in v. Twin Harbors Lumber Co.*, 465 F.2d 489, 491 (9th Cir. 1972). Plaintiff claims damages in the amount of \$75,000, plus attorney’s fees, costs, and interest. See Complaint.

9. Pursuant to 28 U.S.C. § 1446(d), Defendant will file a notice of removal with the Clerk of the Circuit Court of Washington County, Oregon, informing the court that this matter has been removed to federal court. A copy of this Notice of Removal, including all supporting exhibits, will be attached to the notice of removal filed with the Circuit Court of Washington County, Oregon. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is also being served upon Plaintiff.

Dated: April 12, 2021

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

By: /s/ Caroline R. Guest
 Caroline R. Guest, OSB No. 943280
 caroline.guest@ogletree.com
 Florence Z. Mao, OSB No. 144804
 florence.mao@ogletree.com
 503-552-2140
 Attorneys for Defendant
 EDWARDS VACUUM LLC

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2021 I served the foregoing DEFENDANT EDWARDS VACUUM LLC'S NOTICE OF REMOVAL TO FEDERAL COURT on:

Matthew Zekala, OSB No. 131454
mzekalamlo@gmail.com
Macke Law Offices LLC
2455 NW Marshall St., Suite 6
Portland, OR 97210
Tel: 503.282.0863
Fax: 503.886.8918

Attorneys for
Plaintiff Andrew Williams

- by **electronic** means through the Court's eFile and Serve system.
- ☐ by **mailing** a true and correct copy to address for the persons listed above.
- ☐ by causing a true and correct copy to be **hand-delivered** to the address of each person listed above. It was contained in a sealed envelope and addressed as stated above.
- ☐ by causing a true and correct copy to be delivered **via overnight courier** to the last known address of each person listed above. It was contained in a sealed envelope, with courier fees paid, and addressed as stated above.
- ☐ by **e-mailing** a true and correct copy to the persons listed above.

s/Kai Jones
Kai Jones, Practice Assistant
kai.jones@ogletree.com

46391492.1